IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 835 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MOHANDAS NENUMAL LADWANI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 835 of 1994
MR PM VYAS for the appellant
Mr. S.S. Patel, APP for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 13/02/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE M.H.KADRI)

1. Appellant, original accused, by filing this appeal under Section 374(2) of the Code of Criminal Procedure, has challenged the judgment and order dated August 6, 1994, passed by the learned Sessions Judge, Baroda, in Sessions Case No.176 of 1994, by which judgment and order, the appellant was convicted under Section 302 of the Indian Penal Code, and sentenced to undergo R.I. for life.

2. The prosecution case, in a nut-shell, is as under: As per the complaint lodged by the complainant, P.W.3, Aasandas Ladwani, the appellant was residing with his family in Koyali Falia, Vadodara, just opposite to his house. The family of the appellant consisted of his wife, P.W.6, Dhanvantiben, son, P.W.5, Suresh and deceased son Sunil. The appellant was not doing any service or business and he only used to consume liquor every day. Deceased son, Sunil, was serving in a shop of Dolatbhai, who is the brother of the appellant. The appellant has two daughters and both of them were got married before the date of the incident in question. Deceased Sunil used to quarrel with the appellant as the appellant was not doing any work and was consuming liquor every day. On September 1,1993, around 6.30 a.m., P.W.6, Dhanvantiben, wife of the appellant, had raised shouts 'dada dada'. The complainant did not pay any attention to the shouts raised by P.W.6, Dhanvantiben, as the appellant used to pick up quarrel daily and P.W.6, Dhanvantiben, whenever such quarrel took place, had raised shouts on many occasions. After some time, the brother of the appellant, P.W.4, Dolatbhai, who was also residing in the nearby locality, had run to the house of the appellant and had found that Sunil was lying on the floor in a bleeding condition. The appellant was carrying a knife in his hand. The appellant had threatened P.W.4, Dolatbhai, that he should not interfere with his affairs otherwise he would face dire consequences. P.W.4, Dolatbhai, had raised shouts and had called the complainant, P.W.3, Aasandas, by saying that Sunil was given knife blows and he should come immediately. The complainant, P.W.3, Aasandas, had, thereafter, immediately gone to the house of the appellant wherein he had found that Sunil was lying on the floor having received many fatal injuries. The complainant, P.W.3, Aasandas, was also threatened by the appellant by uttering words that he should not make any attempt to catch hold of him otherwise he would be killed. Thereafter, P.W.4, Dolatbhai, and P.W.5, Suresh

alias Harish,, had taken Sunil in an auto-rickshaw to the Civil Hospital. The complainant, P.W.3, Aasandas, had followed them on a scooter. The Doctor on duty at the Civil Hospital had examined Sunil and had declared him dead. The complainant, P.W.3, Aasandas, had lodged a complaint at the City Police Station, Vadodara, against the appellant for committing murder of his son, Sunil, which was registered at CR No.I-165/93 for the offence under Section 302 of the Indian Penal Code. In the meantime, the appellant had presented himself at the City Police Station, Vadodara, and had declared that he had killed his son, Sunil. At that time, the appellant was carrying with him the muddamal knife in the pocket of his pant. The said muddamal knife was seized under a panchanama. At that time, the appellant had consumed liquor and foul smell of liquor was coming from his mouth. The appellant had sustained minor abrasions and he was sent to Jamnabai Hospital for primary treatment. P.W.16, P.I. R.S. Gohil, who had recorded First Information Report of the complainant, P.W.3, Aasandas, was entrusted with the investigation of CR No.I-165/93. P.W.11, PSI, Galfade , of the City Police Station, Vadodara, had gone to the place of the incident and had drawn the panchanama of place of incident and had collected incriminating articles. The inquest of the dead body of the deceased was held and the dead body was sent for autopsy to S.S.G. Hospital, Vadodara. Autopsy of the dead body of Sunil was carried out by P.W.1, Dr.Pankaj Haridas Barai on September 1,1993 between 12.30 and 1.30 p.m. P.W.16, P.I. Gohil, had recorded statements of witnesses and had collected clothes put on by the deceased at the time of the incident. The incriminating articles which were collected during the investigation, were sent to the Forensic Science Laboratory ('FSL' for short). P.W.16, P.I. Gohil sent yadi to the Mamlatdar, Vadodara, for drawing map of the place of incident. On completion of investigation and on receipt of the report of the FSL and the post-mortem reports, P.W.16, PI, Gohil, had filed chargesheet against the appellant in the Court of learned Judicial Magistrate, First Class, Vadodara, for the offences punishable under Section 302 of the Indian Penal Code. The said chargesheet came to be registered as Criminal Case No.4537 of 1993. As the offence under Section 302 of the Indian Penal Code is exclusively triable by the Court of Sessions, the learned Judicial Magistrate, First Class, Court No.1, Vadodara, by order dated March 22, 1994, committed the case to the Court of Sessions, at Vadodara, for trial, where it came to be numbered as Sessions Case No.176 of 1994.

3. Charge Exh.1 was framed against the appellant for the offences punishable under Section 302 of the Indian Penal Code and under Section 135 of the Bombay Police Act. The charge was read over and explained to the appellant wherein he pleaded not guilty and claimed to be tried. In order to prove charges against the appellant, the prosecution examined the following witnesses. (1), P.W.1, Dr. Pankaj Barai, Medical Officer of SSG Hospital, Vadodara, Exh.7; (2) P.W.2, Dr. Nitaben Vora, Medical Officer of SSG Hospital, Vadodara, who had drawn sample of blood from the body of the appellant to find out his blood group, at Exh.9; (3) P.W.3, Aasandas Ladwani, complainant, Exh.18; (4) P.W.4, Dolatbhai Ladwani, Exh.20; (5) P.W.5, Suresh Mohandas Ladwani, son of the appellant, Exh.21; (6) P.W.6, Dhanvantiben Mohandas Ladwani, wife of the appellant, Exh.22; (7) P.W.7, Panch, Gulammohmed Dudhwala, Exh.23; (8) P.W.8, Chhatachand Chhitumal Sindhi, Exh.26; (9) P.W.9, Police Jamadar, Damyantiben Parmar of City Police Station, Vadodara, Exh.29,; (10) P.W.10, PSI, J.M. Gadhvi, Exh.31; (11) P.W.11, PSI, Haribhai G. Galfade, Exh.32, and (12) P.W.12, P.I. R.S. Gohil, Investigating Officer, Exh.33. The prosecution also produced documentary evidence such as post-mortem notes Exh.8, panchanama of place of incident Exh.11, inquest panchanama Exh.12, panchanama of seizure of clothes of the deceased Exh.13, panchanama of seizure of the clothes of P.W.5, Suresh Alias Harish Exh.14, report of the FSL, Exh.17, First Information Report lodged by P.W.3, Aasandas, Exh.19, panchanama of arrest, seizure of clothes, as well as knife from the appellant Exh.24, injury certificate of the appellant, Exh.28, map of place of incident Exh.35, etc, to prove the case against the appellant. After recording of the evidence of the prosecution witnesses was over, the appellant was questioned generally and his statement came to be recorded under Section 313 of the Code of Criminal Procedure. In the further statement, the defence of the appellant is of general denial. The appellant has not led any evidence nor examined any witness in his defence.

4. The learned Sessions Judge, on appreciation of oral as well as documentary evidence, and after hearing the arguments of the learned Additional Public Prosecutor and the learned counsel for the defence, held (i) that the deceased Sunil had died a homicidal death on September 1, 1993; and (ii) that the appellant had inflicted fatal injuries with muddamal knife on vital parts of the body of the deceased, Sunil, with deliberate intention to cause his death and the injuries sustained by the deceased, Sunil, were sufficient in the ordinary

course of nature to cause his death. On the basis of the abovereferred to conclusions, the learned Sessions Judge, by the impugned judgment and order, convicted the appellant under Section 302 of the Indian Penal Code, and sentenced him to undergo R.I. for life, which has given rise to filing of the present appeal.

5. Learned advocate, Mr. P.M. Vyas and learned Additional Public Prosecutor, Mr. S.S. Patel, have taken us through the entire record and proceedings of the appeal.

6. We have carefully examined the record and proceedings and reappreciated oral as well as documentary evidence, and have heard the submissions of the learned advocate, Mr. P.M.Vyas, for the appellant and learned Additional Public Prosecutor, Mr. S.S. Patel, for the respondent.

7. P.W.1, Dr. Pankaj Barai, who had performed autopsy of the dead body of Sunil, in the post-mortem notes Exh.8, has mentioned six external injuries found on the dead body, which are as under:

"1. Stab wound over left back of chest (transverse) 15 cm below the highest point of shoulder and 3 cm away from midline. size:- 2.5 cm x 1 cm both angles aent. No brushing of surrounding margins.
2. Stab wound over left side of front of abdomen 40 cm below left clavicle and 7 cm away from midline. Intestine (small) seen coming out of injury (Transverse) Size: 3 cm x 1.5 cm Both angles aente. No brushing of surrounding margins cavity deep.
3. Incised wound over left side of front of chest 10 cm below left clavicle and 7 cm away from midline (oblique). Size: 4 cm x 1.5 cm x muscle deep. Both angles ante. No brushing of surrounding margins cavity deep.
4. Incised wound over left forearm 4 cm below left elbow joint. Size: 4 cm x 1.5 cm x muscle deep. Both angles acute. No brushing of surrounding margins.
5. Incised wound over right back of chest 11 cm away from highest point of shoulders and 5 cm away from midline. Size: 1.5 c.m x 0.5 cm x 0.5 cm. Both angles acute. No brushing of surrounding margins.
6. Lineer Abrasion over Right eyebrow 1.5 cm long."

P.W.1, Dr. Pankaj Barai, deposed that he had taken out blood sample in a sealed bottle to find out the blood

group of the deceased. According to P.W.1, Dr. Pankaj Barai, injury No.1, which was a stab wound over left back of chest (transverse) 15 cm below the highest point of shoulder and 3 cm away from midline, was sufficient in the ordinary course of nature to cause death. During his oral testimony, the muddamal knife was shown to him and he categorically deposed that, with the said muddamal knife, injuries were possible. The oral testimony of P.W.1, Dr. Pankaj Barai, and the post-mortem notes Exh.8, have proved beyond doubt that the deceased Sunil died a homicidal death, and the finding of the learned Sessions Judge, to that effect, deserves to be confirmed.

8. The appellant, since many years, did not carry on any vocation and was indulging in consuming liquor every day and, therefore, he used to pick up quarrel with the family members. On August 31, 1993, i.e. a day prior to incident, a quarrel had taken place between the deceased Sunil and the appellant. Both the sons of the appellant were working whereas the appellant was not doing any work and, instead, he was spending a sizeable amount from the earnings of his sons towards the unnecessary expenses of consuming liquor. The deceased Sunil was sleeping in the balcony of the house of the appellant and, to bring to an end of the life of his son, Sunil, the appellant, around 6 a.m. to 6.30 a.m. on September 1, 1993, had taken a knife from the kitchen of his house and had inflicted successive knife blows on the chest and on the back of the body of the deceased Sunil. The appellant had selected vital parts of the body of the deceased Sunil for inflicting fatal knife blows. The deceased Sunil was sleeping and was not in a position to defend himself. The appellant had acted cruelly in inflicting the knife blows and had not shown any mercy towards his son, Sunil. The appellant had motive to finish the life of his son, Sunil, as he was scolding the appellant daily for not doing any work and consuming liquor. The oral testimony of the wife of the appellant, P.W.6, Dhanvantiben, and the son of the appellant, P.W.5, Suresh alias Harish, had proved beyond doubt that, on the day of the incident between 6.00 a.m. and 6.30 a.m., the appellant had inflicted fatal knife blows on the deceased Sunil while he was sleeping in the balcony. P.W.5, Suresh, at that point of time, was sitting on a sofa when the incident had taken place. He had seen the appellant taking the knife and going towards the direction of the balcony. As per his evidence, he had seen the appellant giving knife blows on the deceased Sunil while Sunil was sleeping. When the deceased Sunil raised shouts, P.W.5, Suresh had at once gone to the balcony where he saw the appellant inflicting successive knife blows on the body of the

deceased Sunil. P.W.6, Dhanvantiben, who is the wife of the appellant, on hearing the shouts of Sunil, had come to his rescue and she and P.W.5, Suresh, had tried to save Sunil from the murderous assault of the appellant. The appellant had given threats that, if they intervened, he would finish them. Both, P.W.5, Suresh, and P.W.6, Dhanvantiben, had raised shouts calling for help and, therefore, P.W.3, Aasandas, and P.W.4, Dolatbhai, who were uncles of P.W.5, Suresh, had, at once, come. According to the evidence of P.W.3, Aasandas and P.W.4, Dolatbhai, they had also seen the appellant carrying the knife in his hand which was blood stained and the appellant had also threatened P.W.3, Aasandas and P.W.4, Dolatbhai, who are his brothers, that, if they intervened, he would finish them. The oral testimony, as discussed above, had proved beyond doubt that the appellant was seen by the witnesses giving successive blows with knife on vital parts of the body of the deceased Sunil which ultimately resulted into his death. The witnesses, as noted above, were searchingly cross examined by the learned advocate for the defence but their evidence was not shaken. P.W.5, Suresh, who is the son of the appellant and P.W.6, Dhanvantiben, who is the wife of the appellant, are closely related to the appellant and they had not shown any favour to the appellant and had deposed in a most natural way implicating the appellant with the commission of the murder of deceased Sunil. The learned Sessions Judge has committed no error in placing reliance on the oral testimony of P.W.5, Suresh, son of the appellant and P.W.6, Dhanvantiben, the wife of the appellant. There is no reason to disbelieve the oral testimony of the above witnesses, which also gets corroboration from the evidence of P.W.3, Aasandas and P.W.4, Dolatbhai, who are brothers of the appellant. In our view, the oral testimony of the above four witnesses had proved beyond doubt that the appellant wanted to commit the murder of his son, Sunil, because Sunil used to scold him for not doing any work and for spending money for consuming liquor.

9. The oral testimony of the eye-witnesses gets corroboration from the report of the FSL and Serologist report, which indicated that on the clothes put on by the deceased at the time of the incident, blood group 'B' was found, whereas the clothes put on by the appellant, which were seized at the time arrest, were also stained with blood of group 'B' which was the blood group of the deceased. The mattress and pillow, which were found to have been washed off to remove the blood-stains, were also sent to the FSL and the report of the Serologist

showed that the blood-stains, which were found to have been removed from the said mattress and pillow, were also of blood group 'B' which was the blood group of the deceased. The cumulative effect of the oral as well as documentary evidence, in our view, had proved beyond doubt that the appellant is the person who had committed murder of his son, Sunil, on September 1, 1993. One important circumstance which also requires to be mentioned is that the appellant after committing murder of the deceased Sunil, had surrendered to the Police Station with blood-stained knife. The clothes put on by the appellant were seized at the time of his arrest and were sent to the FSL. The report of the FSL, as mentioned above, disclosed that the clothes of the appellant which were blood-stained, were also having blood-stains of blood group 'B' which was the blood group of the deceased. There can be no manner of doubt that the appellant, with the intention to kill the deceased Sunil, had inflicted successive knife blows on vital parts of the body of the deceased and the appellant had shown no mercy towards his son, Sunil, who was in a deep sleep in the early morning hours on September 1, 1993

10. Learned advocate for the appellant has submitted that the injuries found on the body of the deceased Sunil could not have been inflicted by the muddamal knife. He has further submitted that, as per the evidence of P.W.1, Dr. Barai, injuries Nos. 1 and 2 could not have been caused by the muddamal knife. In our view, the above submissions of the learned advocate for the appellant are devoid of any merit. When there is a direct evidence in the nature of oral evidence of P.W.5, Suresh, son of the appellant and P.W.6, Dhanvantiben, the wife of the appellant, which, in unequivocal terms, had established that the appellant had caused injuries with muddamal knife on the chest and abdominal parts of the body of the deceased, Sunil, the medical evidence would be of no help to the appellant. In our view, there is no conflict in the oral testimony and the medical evidence. The oral testimony of the witnesses who are closely related and who have no reason to falsely implicate the appellant, had proved beyond doubt that the appellant and the appellant alone was responsible for causing the death of deceased Sunil. Therefore, we have no hesitation in holding that the appellant had committed murder of deceased Sunil while he was sleeping on the balcony on the fateful day on September 1, 1993. Therefore, the finding of the learned Sessions Judge that the appellant had inflicted fatal injuries with the muddamal knife on the vital parts of the body of the deceased, Sunil, with deliberate intention to cause his death, and the injuries

sustained by the deceased, Sunil, were sufficient in the ordinary course of nature to cause his death, deserves to be confirmed. Consequently, the sentence imposed on the appellant to undergo R.I. for life also deserves to be upheld.

11. As a result of foregoing discussion, the appeal fails and is dismissed. The conviction of the appellant under Section 302 of the Indian Penal Code, and sentence imposed on him to undergo R.I. for life, recorded by the learned Sessions Judge, Baroda, vide the judgment and order dated August 6, 1994, in Sessions Case No. 176 of 1994, are hereby confirmed. The muddamal be destroyed in terms of the direction given by the learned Sessions Judge in the impugned judgment.

(M.H. Kadri, J.)

(Akshay H. Mehta, J.)
(swamy)